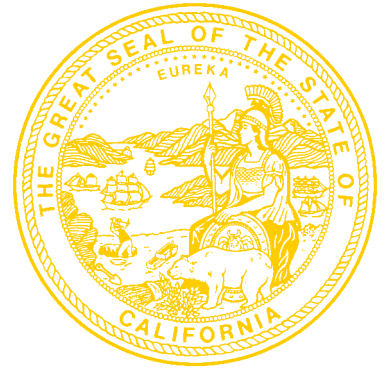


FPPC

Bulletin



September 2004

Fair Political Practices Commission

Volume 30, No. 3

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Toll-free Advice Line: 1-866-ASK-FPPC

Public officials, local government filing officers, candidates, lobbyists and others with obligations under the Political Reform Act are encouraged to call toll-free for advice on issues including campaign contributions and expenditures, lobbying and conflicts of interest. FPPC staff members answer thousands of calls for telephone advice each month.

Message from the Chair

Filing officers play a vital role in the administration of the Political Reform Act. Their dedicated service provides a key link between the FPPC and public officials and designated employees at thousands of local, state and multi-county agencies.

We know that filing officers also face many challenges, including limits on budget and staffing resources, as they fulfill their duties.

As part of our effort to help filing officers do the best job possible, the FPPC currently is developing new guidelines for filing officers for Statements of Economic Interests. On July 22, FPPC staff members in Sacramento hosted a well-attended Interested Persons' meeting to receive input and suggestions on draft guidelines. Staff appreciated the many thoughtful comments from filing officers representing both large and small agencies.

A final draft of the guidelines is expected to be presented to the full Commission for approval later this year. To read more details about the Interested Persons' meeting and the draft guidelines, see the article on page 7 of this issue of the Bulletin.

The Bulletin frequently offers other helpful information for filing officers, including many articles in the regular Clerks' Corner feature section. You can subscribe to receive the Bulletin by e-mail by visiting this page on the FPPC's web site:

<http://www.fppc.ca.gov/index.html?id=408>

A final note: A central purpose of the Political Reform Act is timely public disclosure. I would like to take this opportunity to remind filing officers that the Act mandates that reports and statements filed under the Act, including Statements of

(Continued on page 2)

**California
Fair Political
Practices Commission**

Commissioners

Liane Randolph, Chair
Philip Blair
Sheridan Downey III
Pamela Karlan
Thomas S. Knox

Commission Meetings

Meetings are generally scheduled monthly in the Commission Hearing Room, 428 J Street, 8th Floor, Sacramento. Please contact the Commission or check the FPPC web site, <http://www.fppc.ca.gov>, to confirm meeting dates.

Pursuant to section 11125 of the Bagley-Keene Open Meeting Act, the FPPC is required to give notice of its meetings ten (10) days in advance of the meeting. In order to allow time for inclusion in the meeting agenda and reproduction, all Stipulation, Decision and Order materials must be received by the FPPC no later than three (3) business days prior to the ten day notice date.

The Commission meeting agenda and supporting documents are available free of charge on the Commission's web site at <http://www.fppc.ca.gov>. Additionally, past and future agendas are posted on the web site.

...Message from the Chair

(Continued from page 1)

Economic Interests (the Form 700), are public records open for public review and copying. No conditions may be imposed upon persons seeking to look at these records. Section 81008 of the Act states:

“(a) Every report and statement filed pursuant to this title is a public record open for public inspection and reproduction during regular business hours, commencing as soon as practicable, but in any event not later than the second business day following the day on which it was received. No conditions whatsoever shall be imposed upon persons desiring to inspect or reproduce reports and statements filed under this title, nor shall any information or identification be required from such persons. Copies shall be provided at a charge not to exceed ten cents (\$0.10) per page. In addition, the filing officer may charge a retrieval fee not to exceed five dollars (\$5) per request for copies of reports and statements which are five or more years old. A request for more than one report or statement or report and statement at the same time shall be considered a single request.”

Filing officers are welcome to call the FPPC's toll-free advice line — 1-866-ASK-FPPC — if they have any questions about public review of Statements of Economics Interests or other issues involving the Act.

We at the FPPC thank California's filing officers for their dedication and service, and we look forward to continued progress and cooperation as we jointly administer the Act.

Liane M. Randolph, Chair

The FPPC *Bulletin* is published by the Fair Political Practices Commission

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Telephone: 1-916-322-5660

Enforcement hotline: 1-800-561-1861

The *Bulletin* is published quarterly on the FPPC web site. To receive the *Bulletin* by e-mail, use our web site Mailing Lists tool at <http://www.fppc.ca.gov/index.html?id=408>

Two Veteran FPPC Enforcement Division Employees Retire

Two veteran employees of the FPPC's Enforcement Division, Alan Herndon and Shirley N. Fong, retired this summer after long careers of dedicated service to the Commission and public.

Herndon served as Chief Investigator of the Enforcement Division, while Fong was the busy division's Associate Governmental Program Analyst.

Combined, the two have a half-century of staff experience at the FPPC.

"Al and Shirley personify public service and dedication to the state of California" said Liane M. Randolph, chair of the FPPC.

Herndon began his FPPC career in 1980 as an Accounting Specialist, although he had worked at the Commission even earlier — during parts of 1977 and 1978 — on temporary loan from his previous state post on the staff of the Franchise Tax Board. He was promoted to Chief Investigator of the Enforcement Division in 1983, remaining in that key job for 21 years until his retirement.

Herndon trained and supervised dozens of enforcement employees over the years and oversaw the investigation of thousands of cases involving violations of the Political Reform Act.

"I believe in the mission for which the Commission was created; I always have," Herndon said in an interview shortly before his last day at the agency. "And I also believe that the system wouldn't function nearly as well without an active and fair enforcement program."

"I believe in the mission for which the Commission was created; I always have."
— Al Herndon

In the course of his career, Herndon worked for every chairperson the Commission has had since it was created by voters in 1974. He said he is looking forward to some travel, golf, and having "no specific plans" for his retirement days ahead.

Fong began her Commission service in the fall of 1980 as a Stenographer in the Enforcement Division. Over the years she was promoted to Legal Secretary, Staff Services Analyst and,

finally, the Enforcement Division's Associate Governmental Program Analyst. She has been considered the behind-the-scenes "hub" in the Enforcement Division and kept a myriad of activities running smoothly. She maintained and updated records, assembled statistics, produced reports, provided procedural guidance, and responded to hundreds of time-sensitive Public Records Act requests.



Shirley Fong

She also played a key role in the development of the Enforcement Division's database system.

"No two days were ever the same," said Fong. "I've really enjoyed the variety of the work and the fact that we take a complaint and work it through the enforcement process from start to finish."

"If somebody stays this long at a place, they must really like it," she added.

Fong said she has a busy retirement planned, including travel, projects around the house and classes. A major Kings and basketball fan (as is Herndon), Fong said another possibility "is traveling the country to see games at all of the NBA sports arenas."

The retirees each received a special, signed Commission resolution honoring their service.

Sue Straine, a Supervising Investigator in the Enforcement Division, has been named the new Chief Investigator upon Herndon's retirement. Sandy Johnson, an FPPC Staff Services Analyst, has been named to Fong's post.



Alan Herndon

Newly Amended Regulations Address Records of Contributions Made and Received Electronically

Amended Regulations 18401 and 18421.1

By Adrienne Korchmaros
FPPC Political Reform Consultant

After several consultations and meetings between FPPC staff and committee treasurers, the Commission has approved two regulations to provide clearer guidance to those committees using electronic methods to make and receive contributions. Using these regulations, which were approved at the Commission's August meeting, committees will have a better understanding of how to keep accurate records, including what documents should be retained in the committee's history files.

Newly amended regulation 18401 details the records that must be maintained by committees in order to comply with the recordkeeping rules. In addition to existing recordkeeping instructions for contributions received by the committee, the amendment adds new requirements for recording contributions made by wire transfer, credit card or debit account transactions, and "similar electronic payment option" language broad enough to include methods using Internet payment sites.

The original source documentation required for contributions received by the committee has been expanded to include all credit card receipts, transaction slips, credit card vouchers and any other writing signed by the contributor. Generally, committees are now specifically required to retain any documentation of credit card transactions, including credit card confirmation numbers and itemized transaction reports, as well as any other information collected when the committee debits the contributor's account.

The Commission also amended regulation 18421.1, which specifies when contributions are made or received for purposes of campaign dis-

"It shall be the duty of each candidate, treasurer and elected officer to maintain such detailed accounts, records, bills, and receipts as shall be necessary to prepare campaign statements and to comply with the provisions of Government Code, Title 9, Chapter 4 (Sections 84100, et seq.). The duty includes maintenance of detailed information and original source documentation...."

— from FPPC Regulation 18401

closure. Although the rules for reporting contributions made by check have always been clear, the previous regulation language did not specifically address how electronic contributions, such as credit card contributions made via the Internet, would be disclosed. To take care of this, the Commission amended regulation 18421.1 to establish that an electronic contribution is made in the same way that a non-electronic contribution is made, on the same date that the contribution is mailed, delivered, or otherwise transmitted to the recipient.

To determine when a contribution is received, the committee (or candidate) will use the date the committee possesses or controls the funds or payment information, whichever date is earlier.

Examples:

— A contributor makes a credit card contribution to a committee through the website service PayPal. The committee receives an e-mail from PayPal notifying them that a contributor would

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...Contribution Reporting

(Continued from page 4)

like to make a contribution to the committee. Logging onto the PayPal website, the committee can accept the contribution and receive the funds. The committee received the contribution on the date it received the e-mail from PayPal containing the credit card and contributor information. For recordkeeping purposes, the committee will save the e-mail notification of the payment received as original source documentation.

— A volunteer at a committee's headquarters receives credit card and contributor information over the telephone. The information is documented by the volunteer and submitted to the committee treasurer for processing. The committee received the contribution on the date the volunteer received the credit card and contributor information, and the document submitted to the committee treasurer must be retained by the committee.

— Credit card contributions to a candidate's committee are made on the committee's website. The contributor inputs his or her name, address, occupation, employer, telephone number, e-mail address, and the amount of the contribution, which is transmitted to the committee's bank. The bank validates all of the credit card information against the data entered by the contributor and if it matches, the bank processes the contribution and deposits the funds into the committee's bank account. The bank then notifies the committee that the deposit has been made and provides the contributor information. The committee receives these contributions on the date the funds are posted to the committee's bank account (because this date is earlier than the date the committee received the payment information). The committee must retain documentation of the electronic transaction.

To review the amended regulations and print copies for your files, click the Library & Publications section at the top of the www.fppc.ca.gov.

Lobbyist Ethics Courses Are Scheduled

Government Code section 86103 requires lobbyists to complete an ethics course as a condition of registration to lobby in the State of California. These courses are conducted jointly by the Assembly Legislative Ethics Committee and the Senate Committee on Legislative Ethics.

THERE IS NO PROVISION FOR WAIVER OF THE ETHICS COURSE REQUIREMENT OR FOR AN EXTENSION OF THE DEADLINE TO FILE A "LOBBYIST CERTIFICATION STATEMENT" (FORM 604) CERTIFYING AN ETHICS COMPLETION DATE.

Any registered lobbyist (new or renewing) who has not completed the ethics course requirement for the 2003-2004 Legislative Session and/or the 2005-2006 Legislative Session should attend one of these courses.

Any lobbyist who does not complete the ethics course requirement and fails to comply with the related filing deadlines is prohibited from acting as a lobbyist in California and may be subject to criminal penalties and substantial fines.

For reservation information, contact Jeanie Myers at the Senate Legislative Ethics Committee at (916) 324-6929 and request that an ethics course sign-up form be faxed to you.

Lobbyist Ethics Courses at the SACRAMENTO CONVENTION CENTER

- 1) Wed., Nov. 17, 2004, 10 a.m.-Noon
- 2) Wed., Nov. 17, 2004, 1:30-3:30 p.m.

Advance Sign-Up Required
 Spaces Limited – Sign Up Early
 Ethics Course Fee: \$25
 Checks or Money Orders Only
 Credit Cards and Cash Not Accepted
 Sign-Up Deadline: Nov. 12, 2004

2004 Biennial Notice:

To Amend or Not to Amend?

Deadline Nears for Local Agencies to Respond

By: Cynthia Jones and Teri Rindahl
FPPC Political Reform Consultants

The Political Reform Act requires every local government agency to review its conflict-of-interest code biennially and to return a report to its code reviewing body no later than October 1 of even-numbered years.

The purpose of the review is to determine whether the code is accurate, or if it requires an amendment. Most agencies were notified in July 2004 to conduct this review and to report back by October 1, 2004.

During the last two years, it is likely that many agencies have experienced organizational changes. When reviewing your code, check to see if position titles are still current. Were there any positions deleted or departments combined or abolished? Any reorganizations that changed position titles? Are there any new positions that may need to be added?

Remember to tailor the disclosure categories to limit disclosure to just those types of financial interests the designated employee can affect in his or her decision-making capacity. Do not give full or broad disclosure to positions with limited decision-making authority. For example, you do not want to require the disclosure of real property if the governmental decisions made by a particular position do not affect real property.

If your agency needs to make any changes, the amended code is due to the code reviewing body within 90 days of filing the biennial notice.

Note that the agency's amended code is not effective until it has been approved by its code reviewing body.

If you have any questions regarding the biennial review process; please feel free to call the FPPC. Additional information can be found on our website at:



<http://www.fppc.ca.gov/index.html?id=370>

Future Meeting Dates

The Fair Political Practices Commission currently is planning to meet on the following dates during the remainder of calendar year 2004:

Thursday, September 2
Thursday, October 7
Thursday, November 4
Thursday, December 2

Meetings generally begin at 9:30 a.m. or 9:45 a.m. in the FPPC's 8th floor hearing room at 428 J Street, Sacramento, but check the FPPC web site regularly as dates and times can change.

Filing Officers Offer Comments and Suggestions On Proposed Filer Notification Guidelines

By Jon Matthews
FPPC Publications Editor

The Fair Political Practices Commission is developing new guidelines for filing officers who receive Statements of Economic Interests (the Form 700).

The proposed guidelines suggest timelines for providing various notifications to individuals who file the disclosure form.

The guidelines were the subject of a July 22 Interested Persons' meeting at FPPC headquarters in Sacramento. A number of filing officers representing both large and small agencies attended and there was extensive informal discussion of the project.

FPPC staff members sought input on a variety of issues relating to the guidelines including:

- What guidelines should apply to notifying filers prior to the annual filing deadline?
- How soon after the annual filing deadline has passed should a filing officer send non-filer written notifications?
- If attempts to obtain a statement are not successful, how soon should an enforcement referral be made?
- Should there be different non-filer notification deadlines for agencies based on the number of filers (i.e. large vs. small agencies)? How many filers would qualify an agency as a large agency?
- What documentation should a filing officer keep in order to demonstrate compliance with the notification guidelines?

The draft guidelines are expected to be presented later this year to the full Commission for approval.

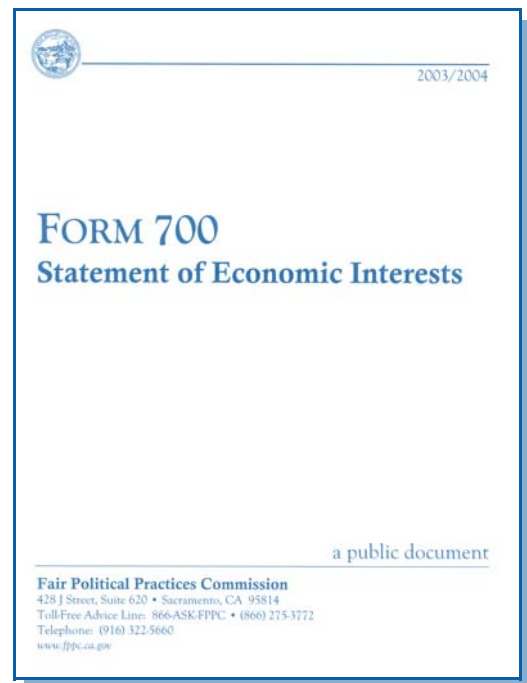
"We've received input over the years that filing officers would find it very helpful to have guidelines," Dixie Howard, FPPC manager of filing officer programs, told participants at the In-

terested Persons meeting.

Howard stressed that the proposed guidelines, once completed, would be suggestions to filing officers and would not be binding. Members of the audience made it clear that different agencies face different time constraints for filer notification depending on the agency's size, the physical location of agency employees and other factors.

"Everybody's situation is a little bit different," Howard added.

She said the FPPC receives over 20,000 Statements of Economic Interests each year.



FPPC staff members and representatives of other agencies noted the budget and staff constraints that may also affect the time needed to log statements and provide notifications to late filers. Meeting attendees also discussed the need to keep good records in case a non-filer is referred to the FPPC for a possible enforcement action.

For more information on the draft guidelines, see the FPPC's Interested Persons' web page at:

<http://www.fppc.ca.gov/index.html?id=363>

Meeting Summaries

Summaries of actions at the Commission's regular monthly meetings are posted on the Commission's web site at:

<http://www.fppc.ca.gov/index.html?id=63>

See the following article for a summary of enforcement actions.

Enforcement Summaries

August Commission Meeting

Conflicts of Interest

In the Matter of Elaine Griffin, FPPC No. 03/257

Staff: Commission Counsel Julia Bilaver and Investigator III Sandra Buckner

As a consultant to the Department of Water Resources in the California Energy Resources Scheduling division, Elaine Griffin made two governmental decisions in which she had a financial interest, in violation of section 87100 (2 counts). \$5,000 fine.

Campaign Money Laundering Violation

In the Matter of Arthur J. Johnston, III, FPPC No. 2004/178

Staff: Senior Commission Counsel Deanne Canar and Supervising Investigator Dennis Pellón

Arthur J. Johnston, III, also known as Jim Johnston, is a self-employed media consultant in San Diego. In September 2003, the Commission issued a default decision and order in the Matter of Colin Flaherty, FPPC No. 99/783, imposing an administrative penalty of \$76,000 on Flaherty for, among other things, 36 violations of section 84301, commonly referred to as "campaign money laundering." Johnston made six contributions on behalf of Flaherty, for which

he was reimbursed, without disclosing to the recipients of the contributions that Flaherty was the true source of the contributions and other required information, in violation of section 84302 (6 counts). \$6,000 fine.

Campaign Reporting Violations

In the Matter of Sarah Reyes, Friends of Sarah Reyes, and Gustavo Corona, FPPC No. 02/429

Staff: Commission Counsel Julia Bilaver and Investigator II Charlie Bilyeu

Sarah Reyes was a successful incumbent candidate for the California State Assembly, representing the 31st District, in the Nov. 7, 2000, general election. Friends of Sarah Reyes was her controlled committee and Gustavo Corona was the committee treasurer. Respondents failed to disclose the making of eight late contributions and the receipt of 23 late contributions in properly filed late contribution reports, in violation of section 84203(a) (31 counts). \$23,000 fine.

In the Matter of Eric Perrodin, Committee to Elect Eric Perrodin, and Thomas Barclay, FPPC No. 01/175

Staff: Commission Counsel Steven Meinrath and Investigator II Charlie Bilyeu

Eric Perrodin was a candidate for mayor of Compton in the April 17, 2001, general municipal election and was elected mayor in the June 5, 2001, run-off election. The Committee to Elect Eric Perrodin was his controlled committee and Thomas Barclay was the committee treasurer. Respondents failed to timely file a pre-election campaign statement, in violation of sections 84200.5 and 84200.8 (1 count); failed to file a late contribution report, in violation of section 84203 (1 count); and failed to timely file a semi-annual campaign statement, in violation of section 84200(a) (1 count). \$11,000 fine.

In the Matter of MedImpact Healthcare Systems, Inc., FPPC No. 03/579

Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten

MedImpact Healthcare Systems, Inc., a pharmacy benefits management corporation located

(Continued on page 9)

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in San Diego, failed to timely file a semi-annual campaign statement, in violation of section 84200(b) (1 count). \$1,500 fine.

In the Matter of Pacific Spanish Network, Inc., FPPC No. 02/1043

Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten
Pacific Spanish Network, Inc., a California corporation engaged in radio communications and headquartered in Chula Vista, committed seven violations by failing to disclose two late contributions in properly filed late contribution reports, in violation of section 84203(a) (2 counts); failing to timely file two semi-annual campaign statements, in violation of section 84200(b) (2 counts); and failing to file a late contribution report and two semi-annual campaign statements electronically, in violation of section 84605(a) (3 counts). \$12,500 fine.

In the Matter of Diane-Meyer-Simon, FPPC No. 03/580

Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten
Diane Meyer-Simon, the founder, president emeritus and chair of Global Green USA who resides in Montecito, Calif., and Indianapolis, Ind., failed to timely file two semi-annual campaign statements, in violation of section 84200(b) (2 counts). \$4,000 fine.

Late Contribution – Streamlined Program

Failure to Timely File Late Contribution Reports – Proactive Program.

Staff: Acting Chief Investigator Sue Straine, Investigator III Jon Wroten, and Political Reform Consultant Mary Ann Kvasager

The following persons and entities have entered into stipulations for failure to file late contribution reports in 2003, in violation of section 84203:

- **In the Matter of George Garrick, FPPC No. 2004-142**
George Garrick of Atherton, Calif., failed to timely disclose a late contribution totaling \$21,200 (1 count). \$3,180 fine.

- **In the Matter of Andrew Littlefair, FPPC No. 2004-148**
Andrew Littlefair of Newport Beach, Calif., failed to timely disclose a late contribution totaling \$21,200 (1 count). \$3,180 fine.
- **In the Matter of Sique Corporation, FPPC No. 2004-155**
Sique Corporation of San Fernando, Calif., failed to timely disclose a late contribution totaling \$21,200 (1 count). \$3,180 fine.

Statement of Economic Interests – Streamlined Program

Failure to Timely File Statements of Economic Interests.

Staff: Commission Counsel Jeffery A. Sly, Investigator III Dan Schek, and SEI Coordinator Mary Ann Kvasager

The following persons have entered into stipulations for failing to timely file Statements of Economic Interests, in violation of sections 87202, 87203, 87204 or 87300:

- **In the Matter of Stephen Kellogg, FPPC No. 03/229**
Stephen Kellogg, a member of the Building Board of Appeals for the City of Modesto, failed to timely file an assuming office, 2001 annual, and 2002 annual Statement of Economic Interests, in violation of section 87300 (3 counts). \$300 fine.
- **In the Matter of Diana Peterson-More, FPPC No. 03/442**
Diana Peterson-More, a member of the Planning Commission for the City of Pasadena, failed to timely file a 2002 annual Statement of Economic Interests, in violation of section 87203 (1 count). \$100 fine.
- **In the Matter of Margaret Briare, FPPC No. 04/027**
Margaret Briare, a director of the Bodega Bay Fire Protection District for the County of Sonoma, failed to timely file a 2002 annual

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Statement of Economic Interests, in violation of section 87300 (1 count). \$100 fine.

- **In the Matter of Berchard Shipley, FPPC No. 03/740**
Berchard Shipley, a member of the Planning Commission for the City of Brentwood, failed to timely file a 2002 annual Statement of Economic Interests, in violation of section 87203 (1 count). \$100 fine.
- **In the Matter of Bridget Silva, FPPC No. 03/725**
Bridget Silva, an Insurance Broker for Keenan & Associates, consultants to multi-jurisdictional insurance agencies, failed to timely file a 2002 annual Statement of Economic Interests, in violation of section 87300 (1 count). \$100 fine.
- **In the Matter of Debra Steward, FPPC No. 03/726**
Debra Steward, an Insurance Broker for Keenan & Associates, consultants to multi-jurisdictional insurance agencies, failed to timely file a 2002 annual Statement of Economic Interests, in violation of section 87300 (1 count). \$100 fine.

June Commission Meeting

Conflicts of Interest and SEI Disclosure Violations

In the Matter of Richard G. Carlile, FPPC No. 99/501

Staff: Senior Commission Counsel Deanne Canar and Investigator III Leon Nurse-Williams
Richard G. Carlile, a member of the Santa Rosa Planning Commission, made, participated in making, and attempted to use his official position to influence governmental decisions in which he had a financial interest, in violation of section 87100 of the Political Reform Act (4 counts); and failed to fully disclose reportable economic interests on four consecutive annual Statements of

Economic Interests, in violation of sections 87203, 87206, and 87207 (5 counts). \$24,000 fine.

Mass Mailing Violations

In the Matter of California Independent Business Political Action Committee and Charles H. Bell, Jr., FPPC No. 99/195

Staff: Senior Commission Counsel Melodee A. Mathay and Supervising Investigator Sue Straine
California Independent Business Political Action Committee (CIB-PAC) is a general purpose recipient committee located in Sacramento. Charles H. Bell, Jr. is CIB-PAC's paid treasurer. In this matter, CIB-PAC and Bell paid for and sent eight political mass mailings that opposed incumbent Assemblyman Brian Setencich in the 30th Assembly District primary election, and supported his challenger, Robert Prenter. All eight mass mailings failed to disclose proper sender identification, which should have included the name, address, and city of CIB-PAC. By failing to include proper sender identification on the eight mass mailings, CIB-PAC and Bell violated section 84305 (8 counts). Following an administrative hearing in Sacramento regarding this matter, Presiding Administrative Law Judge Jaime René Román issued a proposed decision finding that eight violations occurred, and imposing a maximum administrative penalty of \$16,000 on both CIB-PAC and Bell. At its March 15, 2004, meeting, the Commission rejected Judge Román's proposed decision in its entirety, and requested that the parties submit additional evidence, and oral and written argument, on the issue of Bell's liability for the violations. The commission, on June 25, 2004, approved the stipulated agreement agreed to by the parties. \$16,000 fine.

Campaign Reporting Violations

In the Matter of Residential Builders Association of San Francisco, Residential Builders Association of San Francisco PAC, and Joe Cassidy, FPPC No. 01/612

Staff: Commission Counsel Julia Bilaver and Accounting Specialist William Marland
Residential Builders Association of San Fran-

(Continued on page 11)

(Continued from page 10)

cisco is a trade association based in San Francisco. Residential Builders Association of San Francisco PAC is sponsored by the trade association. Joe Cassidy is the treasurer of the trade association's sponsored committee. Respondents failed to report required information regarding the members of the trade association who made contributions of \$100 or more to the sponsored committee, in violation of section 84211(f) (6 counts); failed to disclose a \$10,000 late contribution on a properly filed late contribution report, in violation of section 84203(a) (1 count); failed to send major donor notification letters to contributors of \$5,000 or more, in violation of section 84105 (12 counts); and made prohibited loans of campaign funds, in violation of section 89515 (3 counts). \$47,000 fine.

In the Matter of New Democrat Network and Simon Rosenberg, FPPC No. 01/307

Staff: Commission Counsel Julia Bilaver and Investigator II Charlie Bilyeu

New Democratic Network, a state general purpose committee based in Washington, D.C., and Simon Rosenberg, the founder and treasurer of the committee, failed to timely file two pre-election campaign statements in paper format, in violation of section 84200.5 (2 counts); and failed to file a pre-election campaign statement in electronic format, in violation of section 84605(b) (1 count). \$5,500 fine.

In the Matter of George M. Drysdale, FPPC No. 03/686

Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten

George M. Drysdale of Hillsborough and the Philippines committed one violation of the Act by failing to timely file a semi-annual campaign statement, in violation of section 84200(b) (1 count). \$2,500 fine.

In the Matter of Dale L. Jones and Committee to Elect Dale Jones, FPPC No. 01/592

Staff: Commission Counsel Steven Meinrath and Investigator III Sandra Buckner

Dale L. Jones, an unsuccessful candidate for a seat on the Lynwood City Council in the Nov. 4, 1997 general municipal election, and the Com-

mittee to Elect Dale Jones, his controlled committee, failed to timely file a pre-election campaign statement, in violation of section 84200.8 (1 count); failed to report the true source of non-monetary campaign contributions, in violation of section 84211 (1 count); failed to maintain detailed records and accounts as were necessary to properly prepare a first pre-election campaign statement, in violation of section 84104 (1 count); and failed to timely file a semi-annual campaign statement, in violation of section 84200(a) (1 count). \$4,000 fine.

Contribution Limit Violations

In the Matter of Butte County Republican Central Committee and Jack R. Sargent, FPPC No. 03/474

Staff: Commission Counsel Julia Bilaver and Accounting Specialist Luz Bonetti

Butte County Republican Central Committee, a political party committee based in Butte County, and Jack R. Sargent, the treasurer of the committee, improperly accepted a contribution in excess of \$25,000 from 21st Century Insurance Group for the purpose of supporting candidates for elective state office, in violation of section 85303(b) (1 count); and improperly used a contribution in excess of \$25,000 to make contributions to candidates for elective state office, in violation of section 85303(c) (1 count). \$10,000 fine.

In the Matter of Kern County Republican Central Committee and Matt Brady, FPPC No. 03/475

Staff: Commission Counsel Julia Bilaver and Accounting Specialist Luz Bonetti

Kern County Republican Central Committee, a political party committee based in Kern County, and Matt Brady, the treasurer of the committee, improperly accepted a contribution in excess of \$25,000 from 21st Century Insurance Group for the purpose of supporting candidates for elective state office, in violation of section 85303(b) (1 count); and improperly used a contribution in excess of \$25,000 to make contributions to candidates for elective state office, in violation of section 85303(c) (1 count). \$10,000 fine.

(Continued on page 12)

(Continued from page 11)

In the Matter of San Joaquin County Republican Central Committee and Rick Veldstra, FPPC No. 03/250

Staff: Commission Counsel Julia Bilaver and Accounting Specialist Luz Bonetti
San Joaquin County Republican Central Committee, a political party committee based in San Joaquin County, and Rick Veldstra, treasurer of the committee, improperly accepted a contribution in excess of \$25,000 from 21st Century Insurance Group for the purpose of supporting candidates for elective state office, in violation of section 85303(b) (1 count); and improperly used a contribution in excess of \$25,000 to make contributions to candidates for elective state office, in violation of section 85303(c) (1 count). \$10,000 fine.

SEI Violations

In the Matter of Melodee Brewington, FPPC No. 02/556

Staff: Commission Counsel Jeffery A. Sly and SEI Coordinator Mary Ann Kvasager
Melodee Brewington, a member of the board of trustees of the Junction Elementary School District in Siskiyou County, failed to timely file a 2001 annual Statement of Economic Interests, in violation of section 87300 (1 count). \$400 fine.

Late Contribution -- Streamlined Program

Failure to Timely File Late Contribution Reports – Proactive Program

Staff: Chief Investigator Alan Herndon, Investigator III Jon Wroten, and Political Reform Consultant Mary Ann Kvasager
The following persons and entities have entered into stipulations for failure to file late contribution reports in 2003, in violation of section 84203:

- **In the Matter of Martin D. Singer, FPPC No. 2004-156**

Martin D. Singer of Beverly Hills failed to timely disclose a late contribution totaling \$10,000 (1 count). \$1,500 fine.

- **In the Matter of Edward J. Templeman, FPPC No. 2004-157**

Edward J. Templeman of Canyon Country, Calif., failed to timely disclose a late contribution totaling \$10,000 (1 count). \$1,500 fine.

Commission, Committee for Clean Safe Creeks Agree to \$24,000 Civil Settlement

The Fair Political Practices Commission has reached a \$24,000 civil settlement with the Committee for Clean Safe Creeks, and its treasurers, Susan A. Pino and Rick L. Callender, regarding campaign disclosure violations in connection with their successful effort to win passage of Measure B, the "Clean, Safe Creeks and Flood Protection Plan," in the Nov. 7, 2000, Santa Clara County general election.

The FPPC alleged in its suit that before the election, the Creeks committee failed to timely file a pre-election campaign report disclosing \$170,995 in contributions and \$65,668 in expenditures and failed to file five late contribution reports disclosing an additional \$20,000 in contributions. In addition, when the committee later filed the pre-election report, well after the election, it did not disclose required information about how \$49,795 in contributions was spent. The committee also was not properly described in its campaign filings as a committee that was primarily formed to win passage of Measure B.

The civil lawsuit was filed by the FPPC in Santa Clara County Superior Court on Aug. 4, 2004. The final judgment, based on a stipulation signed by the FPPC, Pino, and Callender, was approved Aug. 13 by Santa Clara County Superior Court Judge Socrates P. Manoukian. Copies of the complaint, stipulation and judgment are available on the "litigation" page of the FPPC Web site at:

<http://www.fppc.ca.gov/index.html?id=380>

Commission Counsel Deanne Canar and Investigator III Daniel Schek handled the case for the FPPC.



The Clerks' Corner

Timely Notification of Candidate and Committee Filers

Gearing up for a November election?

On our web site, we have posted a campaign statement filing schedule for those committees involved with the November 2004 election.

You can find the schedule in the Candidates and Committees section of our web site, www.fppc.ca.gov, or directly via this link:

<http://www.fppc.ca.gov/index.html?id=420>

Once a filing date has elapsed, remember to promptly notify any candidates and known committees that have failed to file a statement on time. If a candidate has filed a Form 501 or a committee has filed a Form 410, you'll know to expect campaign disclosure statements from that candidate or committee.

After you receive the campaign disclosure statements, reviewing of the statements commences. Do the statements contain all the information required by the Act?

These statements must be reviewed as soon as possible to ensure that the public is getting the most accurate information possible. If information is missing and an amendment is necessary, notify the filer in a timely manner. Remember, however, that you are not required to verify entries, examine previously filed statements, or check the filer's mathematical calculations.

Web Site Update



By Jon Matthews
FPPC Publications Editor

The FPPC web site includes a virtual "library" of resource information, ranging from a listing of every FPPC regulation to campaign disclosure manuals to back issues of the *FPPC Bulletin*.

This section is easy to find. Just click on the "Library & Publications" tab at the top of our home page. Or go directly via this link:

<http://www.fppc.ca.gov/index.html?id=9>

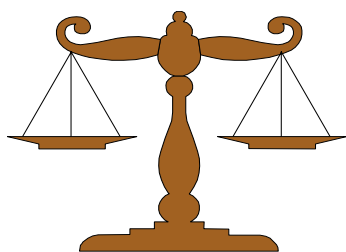
The library section has five main areas. The first includes the latest version of the Political Reform Act of 1974, FPPC formal opinions, and summaries of advice letters. The other areas include proposed and current FPPC regulations, a variety of FPPC publications and fact sheets, an archive of selected Proposition 34 information, and documents relating to some of the past public forums on the Political Reform Act.

For example, click on "Proposed Regulations" to see draft regulations currently being considered for adoption by the Commission. The direct link is:

<http://www.fppc.ca.gov/index.html?id=351>

The text of each proposed regulation is included as well as a "notice" memorandum describing the background of the issue, the proposed regulatory action and any fiscal impact.

As another example, take a look at the FPPC publications area of the Library & Publications section. There you can find many resources including fact sheets, issues of the *Bulletin* dating back to 1998, booklets, annual reports and the FPPC's newly revised campaign disclosure manuals.



Litigation Report

Pending litigation report prepared for the Commission's September 2, 2004, meeting:

California ProLife Council, Inc. v. Karen Getman et al.

This action challenges the Act's reporting requirements for express ballot measure advocacy. In October 2000 the Federal District Court for the Eastern District of California dismissed certain counts for standing and/or failure to state a claim, and later granted the FPPC's motion for summary judgment, eliminating further counts in a judgment entered on January 22, 2002. Plaintiff appealed that judgment to the Ninth Circuit Court of Appeal. The Ninth Circuit rejected plaintiff's legal claims, affirming that the challenged statutes and regulations were not unconstitutionally vague, and that California may regulate ballot measure advocacy upon demonstrating a sufficient state interest in so doing. The Ninth Circuit remanded the matter back to the district court to determine whether California can establish a state interest sufficient to support its committee disclosure rules, and whether the state's disclosure rules are properly tailored to that interest. To permit more time for discovery, the district court issued an amended Scheduling Order, providing that discovery would end on May 17, 2004, with disclosure and discovery relating to expert witnesses to conclude on August 20, 2004. Dispositive motions, if any, will be heard no later than October 29, 2004. Trial is set for March 7, 2005.

FPPC v. Agua Caliente Band of Cahuilla Indians, et al.

The FPPC alleges in this action that the Agua Caliente Band of Cahuilla Indians contributed more than \$7.5 million to California candidates and ballot measure campaigns between January 1 and December 31, 1998, but did not timely file major donor reports disclosing those contributions, and likewise failed to disclose more than \$1 million in late contributions made between July 1, 1998, and June 30, 2002. The FPPC later amended the complaint to add a cause of action alleging that the tribe failed to disclose a \$125,000 contribution to the Proposition 51 campaign on the November 5, 2002, ballot. Defendants responded to the lawsuit by filing a motion to quash service, alleging that they are not required to comply with the Political Reform Act because of tribal sovereign immunity. On February 27, 2003, the Honorable Loren McMaster of the Sacramento County Superior Court ruled in the FPPC's favor. On April 7, defendants filed a petition for writ of mandate in the Third District Court of Appeal, challenging the decision of the trial court. The petition was summarily denied on April 24, 2003, whereupon defendants filed a petition for review in the California Supreme Court. On July 23, 2003, the Supreme Court granted review and transferred the case back to the Court of Appeal, where oral argument was heard before Justices Blease, Sims, and Davis. On March 3, 2004, the Court issued its opinion, affirming the Superior Court's decision after concluding that "the constitutional right of the State to preserve its republican form of government trumps the common law doctrine of tribal immunity." On April 6, 2004, Blue Lake Rancheria and Mainstay Business Solutions, a Government Sponsored Enterprise of the Blue Lake Rancheria, filed with the California Supreme Court a request for depublication of the court of appeal decision. Associate Justice Rick Sims of the Third District Court of Appeal, author of the opinion, filed a letter with the supreme court on April 19, 2004, requesting that the depublication request

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...Litigation Report

(Continued from page 14)

be denied on the ground that it had not been properly served on the Third District Court of Appeal, depriving him of the opportunity to respond to the depublication request. In the interim, on April 13, 2004, the Agua Caliente Band of Cahuilla Indians filed a Petition for Review in the California Supreme Court. On June 23, 2004, the Supreme Court granted the Petition for Review. On July 14, 2004, the Agua Caliente Band of Cahuilla Indians requested an extension of time until September 21, 2004, to file its opening brief, which was granted by the court.

FPPC v. Santa Rosa Indian Community of the Santa Rosa Rancheria

In this action the FPPC alleges that the Santa Rosa Indian Community of the Santa Rosa Rancheria failed to file major donor semi-annual campaign statements in the years 1998, 1999, and 2001, involving more than \$500,000 in political contributions to statewide candidates and propositions, and that defendants failed to disclose more than \$350,000 in late contributions made in October 1998. The complaint was originally filed on July 31, 2002, and was amended on October 7, 2002. On January 17, 2003, defendants filed a motion to quash service, based on its claim of tribal sovereign immunity. On May 13, 2003, the Honorable Joe S. Gray of the Sacramento County Superior Court entered an order in favor of defendants. On July 14, 2003, the FPPC appealed this decision to the Third District Court of Appeal, where the matter is now scheduled for oral argument on August 18, 2004. The Attorney General has filed an amicus brief in support of the FPPC's position. On July 16, 2004, the Commission's appellate counsel was apprised that the tribe had secured new coun-

sel to further pursue this appeal and would be seeking a continuance of the oral argument date. On July 29, 2004, the Santa Rosa Indian Community of the Santa Rosa Rancheria filed a substitution of attorneys replacing Monteau & Peebles with Lang, Richert & Patch of Fresno, as appellate counsel. Concurrent with the filing of the substitution of attorneys, a request for a continuance of the date for oral argument was made. The court granted a continuance of the oral argument to October 19, 2004, at 9:30 a.m.

FPPC v. American Civil Rights Coalition, et al.

In a lawsuit filed in the Sacramento County Superior Court on Sept. 3, 2003, the FPPC alleges that the American Civil Rights Coalition ("ACRC") and its CEO Ward Connerly failed to file campaign statements reporting the source of almost \$2 million contributed to promote the passage of Proposition 54 on the Oct. 7 ballot. An application for intervention in the lawsuit was filed on September 16 by a group known as the "DOE Class" of past and potential contributors to ACRC, seeking among other things to postpone a hearing on the FPPC's motion for preliminary injunction to an unspecified later date. The court went forward with the injunction hearing on September 19, 2004, denying the FPPC's motion on the ground that the factual record was not sufficiently developed to warrant a preemptive remedy. Defendants next brought a special motion to strike the complaint under Code of Civil Procedure § 425.16. On December 1, 2003, the Superior Court denied that motion. On December 3, defendants appealed to the Third District Court of Appeal. Briefing is complete, and defendants/appellants requested oral argument. On August 16, 2004, the court of appeal heard oral argument, and the matter was submitted. A case management conference in the Superior Court is scheduled for September 2, 2004.

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...Litigation Report

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Evans v. FPPC, et al.; Walters v. FPPC, et al.

The plaintiffs in these cases are State Assembly candidates on the March primary ballot. They obtained writs from the Sacramento Superior Court in December, allowing each to amend his Candidate Statement of Intention to change the indicated intent to accept or reject voluntary expenditure limits. The Secretary of State and the FPPC opposed plaintiffs' writ petitions, and the FPPC immediately sought a writ of mandamus in the Third District Court of Appeal to over-turn the lower court's decisions. This petition was denied without comment, with one judge indicating he would grant the writ. The FPPC appealed both cases to the Third District Court of Appeal. While the matters were pending, legislation was passed and signed by the Governor in August that accomplished the relief sought by the Commission in its appeals. The law now clearly states that future candidates will only be able to amend their designation statements regarding expenditure limits as allowed by the expenditure limit scheme itself. Because this codifies Commission interpretation of the rules, the appeals became moot and the Court of Appeal granted the Commission's request for dismissal of both cases.

Larry R. Danielson v. FPPC

On March 13, 2004, Danielson filed a Notice of Appeal from a money judgment entered against him by the Sacramento County Superior Court. Danielson had previously sought a Writ of Mandate in that court, challenging a proposed decision by an Administrative Law Judge which the Commission adopted at its December 2002 meeting. On November 7,

2003, the Superior Court denied the appellant's petition. The FPPC then filed its complaint for a money judgment, and prevailed on a motion for summary judgment, which is the subject of the present appeal. Because Danielsén missed the deadline for depositing the fees to pay for the transcript of the hearing, on April 13, 2004, he filed a Notice of Motion and Motion to Include Reporter's Transcript on Appeal, which was granted by the court on April 20, 2004. Therefore, the transcript is being prepared and, once it is filed with the court, the 20-day period within which Danielsén must file his opening brief will commence. The case is before the Appellate Division of the Sacramento Superior Court. The Attorney General's office is representing the FPPC in this matter.



FPPC
Toll-free Advice Line:
1-866-ASK-FPPC
(1-866-275-3772)

FPPC Advice Summaries

Formal written advice provided pursuant to Government Code section 83114 subdivision (b) does not constitute an opinion of the Commission issued pursuant to Government Code section 83114 subdivision (a) nor a declaration of policy by the Commission. Formal written advice is the application of the law to a particular set of facts provided by the requestor. While this advice may provide guidance to others, the immunity provided by Government Code section 83114 subdivision (b) is limited to the requestor and to the specific facts contained in the formal written advice. (Cal. Code Regs., tit. 2, §18329, subd. (b)(7).)

Informal assistance may be provided to persons whose duties under the act are in question. (Cal. Code Regs., tit. 2, §18329, subd. (c).) In general, informal assistance, rather than formal written advice is provided when the requestor has questions concerning his or her duties, but no specific government decision is pending. (See Cal. Code Regs., tit. 2, §18329, subd. (b)(8)(D).)

Formal advice is identified by the file number beginning with an "A," while informal assistance is identified by the letter "I." Letters are summarized by subject matter and month issued.

Campaign

**Vona Copp, Treasurer
Nakanishi for Assembly 2004**

Dated: June 9, 2004

File Number I-04-105

Campaign funds held in an incumbent's Assembly 2004 reelection committee may not be used to pay debts of the candidate's old committees. However, the funds may be transferred. When transferring into an *Assembly 2002 committee*, attribution is required. With respect to two old committees (*Assembly 1998 and Senate*), attribution is not required. Given that attribution is

not applicable, contributors to the 2004 committee may not make replacement contributions to the 2004 committee, ensuring there is no evasion of the contribution limits applicable to the 2004 election. These funds, once transferred, will be surplus funds subject to section 89519.

Victor Quiroz

Friends of Victor Quiroz

Dated: June 10, 2004

File Number A-04-112

A candidate may not hold a campaign fundraiser in the name of another entity. This letter also provides a general discussion of a controlled committee, the "one bank account" rule, and when a nonprofit organization would become a controlled committee.

**Matt Rexroad, Mayor
City of Woodland**

Dated: June 29, 2004

File Number A-04-114

Payments received principally for a charitable purpose (held in trust by the community for the children of a soldier who was killed in Iraq) are payments for a cosponsored event and not reportable contributions or gifts so long as the payments are not used for any purpose, other than making a gift to the widow and her children. The payments must still be reported within 30 days of the date on which any payment (or aggregated payments from the same source) reaches \$5,000. The report will be filed with the elected officer's agency and will be a public record subject to inspection and copying. The report must contain the name of the payer, address of payer, amount of the payment, date or dates the payment or payments were made, the name and address of the payee, a brief description of the goods or services provided or purchased, if any, and a description of the specific purpose or event for which the payment or payments were made.

Kimberly Rodrigues

City of San Buenaventura

Dated: June 9, 2004

File Number A-04-117

The Political Reform Act does not require local filing officers to post any campaign disclosure

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statements on the Internet. With respect to paper filings, the city clerk's office for the City of San Buenaventura may not redact information required to be filed with its office under the provisions of the Act.

Mike Clesceri, Mayor

City of Fullerton

Dated: June 30, 2004

File Number A-04-131

A contribution will not be made to a city mayor when he appears on a local cable access television show as long as the episodes on which he appears do not contain express advocacy, do not make reference to his candidacy for elective office or any of his opponents for elective office, and do not solicit contributions. A cable television program is not considered a mass mailing under the Act.

Caren Daniels-Meade

Political Reform Division

Dated: May 27, 2004

File Number I-03-193

Under sections 81010(b), 84612 and regulation 18110, the Secretary of State, as filing officer, has the authority to reject an online or electronic filing which lacks the basic information necessary to identify the filer and/or filing, such as the name of the filer, the name of the committee, the office or measure, the election, or the signature of the filer. For filings lacking other information on a form, the summary page, or an attached schedule, the FPPC interprets the above sections of the Act and regulations to require that such filings be accepted by the filing officer, and that the filer be contacted to provide any missing information.

Jennifer Tierney

Friends of Mayor Dick Murphy

Dated: May 19, 2004

File Number A-04-094

A candidate controlled committee may contract with or hire the adult daughter of the controlling candidate to provide the committee with services that have a political, legislative, or governmental purpose.

Hiley Wallis

Tulare County Registrar of Voters

Dated: May 26, 2004

File Number I-04-115

A county is advised that the second pre-election and semi-annual campaign statements may be combined in connection with an August 3, 2004, recall election for the Farmersville Unified School District.

Lance H. Olson

California Democratic Party

Dated: April 20, 2004

File Number A-04-045

A state political party is advised on a number of advertising disclosure requirements applicable when the party makes expenditures regarding ballot measures. The advice discusses the rules in the context of both coordinated and independent expenditures. For purposes of section 84503, "chronological sequence" means the two most recent contributors of identical amounts.

Linda Trask-Lee

Dated: April 19, 2004

File Number I-04-047

An organization formed to educate prospective candidates on how to organize campaigns and run for office, and to educate voters on progressive issues and endorse progressive candidates would qualify as a "committee" and be required to file a Statement of Organization (Form 410) if it receives contributions of \$1,000 or more in a calendar year for a political purpose. Once it has become a committee, it must report all contributions received, expenditures made, unpaid bills and miscellaneous increases to cash on either Form 450 (short form) or Form 460 (long form), depending on the type of information it had to report.

Barry L. Matthews

Friends of Barbara Matthews 2004

Dated: April 14, 2004

File Number A-04-075

A check may be attributed to the primary election when the original check was received prior to and intended for the primary election, but was unsigned, returned to the contributor for signa-

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ture, lost, and subsequently provided to the committee in the form of a replacement check.

Judy Hauff
City of Rohnert Park
Dated: April 22, 2004
File Number A-04-084

A city is advised that pre-election statements filed by candidates and committees being voted on in an August 2004 special election can be combined with the semi-annual filing due July 31, 2004.

Kirk Knight
John Campbell for Senate
Dated: April 30, 2004
File Number A-04-088

A Senate committee may not use funds which have been designated for the 2004 general election to pay primary election debt, unless the aggregate of any contribution attributed to a single contributor, when combined with all the contributions made by that contributor to the primary election, do not exceed the applicable primary election contribution limit.

David Bauer
McClintock for Senate
Dated: March 1, 2004
File Number A-03-292

The contribution limits of section 85301 do not apply to ballot measure committees. A payment by a candidate controlled ballot measure committee to another committee controlled by the same candidate is neither a "contribution" nor a "transfer" under the circumstances presented here, where the payment is merely a repayment of an outstanding loan.

Lance H. Olson
State Insurance Commissioner
Dated: March 1, 2004
File Number I-04-010

A statewide officeholder may use campaign funds raised into a future reelection committee to the same incumbent office for ongoing expenses associated with holding the incumbent office.

James Bieber
Bieber Communications
Dated: March 3, 2004
File Number I-04-014

Employment as a direct mail vendor does not, by itself, create a presumption of coordination for purposes of regulation 18550.1.

Chris Modica, Treasurer
California Tax Fighter's Coalition
Dated: March 2, 2004
File Number A-04-022

The Act does not limit the amount of contributions a recipient committee may receive from a single source to make independent expenditures, or to make contributions to ballot measure committees and local candidates, unless a contributor acts as an agent of the state candidate which is supported by the committee.

Ben Davidian
California Assembly
Dated: March 15, 2004
File Number A-04-061

In a close race, the costs of legal fees and expenses incurred directly in connection with the ballot count or recount are integral to the election and fall within the definition of "net debts outstanding from the election" in section 85316 and regulation 18531.61(d).

William Y. Sheh
Laborers Local 300
Dated: March 16, 2004
File Number A-04-048

A sponsored committee should report administrative expenses paid by its sponsor on Form 460, Schedule C as a nonmonetary contribution, with a "memo entry" noting that the administrative expenses were paid by the sponsor.

Alan L. Olsen, CPA
City of Fremont
Dated: March 25, 2004
File Number A-04-071

A council member is advised regarding the transfer of funds from an existing local officeholder account to his campaign committee established for the local mayoral election. The letter advises that the transfer and attribution provisions of section

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85306 do not apply in this context and advises on the method of reporting the transfer on the respective committees' Form 460.

Conflict of Interest

William D. Esselstein
Menlo Park Fire Protection District Bd.
Dated: June 14, 2004
File Number I-03-293

Two officials of the same agency who are sources of income to one another requested advice regarding their voting on one another's election to an office of their agency, and also the reimbursement of travel-related expenses. Since officers serve in an unpaid capacity, the requestors were advised that election to office would not have a reasonably foreseeable material financial effect and each could vote on the election of the other. However, the reimbursement of expenses would have a reasonably foreseeable material financial effect upon the recipient of the reimbursement. Thus, the officials were advised that they would have a conflict of interest precluding either one from voting on the reimbursement of expenses claimed by the other.

Tom Rowe, P.E.
City of Solvang
Dated: June 7, 2004
File Number A-04-058

The city hires an engineer to act as a city engineer and determines that he is a consultant under its conflict of interest code. The consultant files a Form 700, Statement of Economic Interests, as a result of his position with the city. The consultant asks if he has a conflict of interest under the Act. It appears that with decisions relating to a specific project for which he will provide plan checking services, he will not have a reasonably foreseeable financial effect on his economic interests.

Ronald R. Ball
City of Carlsbad
Dated: June 14, 2004
File Number I-04-074

A consulting firm, which represented clients with applications before the planning commission, was a source of income to a planning commissioner whose spouse was employed by the firm. The firm's standard fee agreement did not make the amount payable to the firm contingent on the outcome of any governmental decision, but the standard agreement, by itself, did not foreclose the possibility that governmental decisions on the underlying project might have reasonably foreseeable material financial effects on the source of income.

William Lepowsky
Dated: June 4, 2004
File Number A-04-096

Under the "academic decisions" exception, the Act does not give rise to a conflict of interest or an impermissible honorarium for a faculty member or other college employee when purchasing a math textbook that the faculty member authored, for personal use or for delivery to another instructor at the college, and receiving reimbursement for the textbook from the college administration.

Ila Eileen Indelicato
Lockeford Community Services District
Dated: June 7, 2004
File Number A-04-104

A member of a local community services district board who is also a real estate agent was advised that she could vote with the board on whether to authorize an environmental study in connection with sewer service to a new subdivision, since it is not reasonably foreseeable that the mere act of conducting the study will have a material financial effect on her employer or on other sources of commission income to her. However, the official was advised that, under the facts she provided, voting on the acquisition of a waste water disposal sight and new facilities necessary to provide sewer service to the subdivision could have a reasonably foreseeable material financial effect on sources of income to her,

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depending on the listing arrangements for sale of lots and homes in the new subdivision. This is a factual question for the official to decide.

John W. Stovall
Reclamation District No. 1608
Dated: June 16, 2004
File Number A-04-111

A member of the board of trustees of a reclamation district may participate in board decisions concerning the dredging of a slough, even though the official owns residential real property with a boat dock extending into the slough. The circumstances in this case invite application of regulation 18704.2(b)(2), which provides that real property is only indirectly involved in decisions concerning repair or maintenance of adjacent existing streets, water, sewer, storm drainage or similar facilities, giving rise to a presumption that any reasonably foreseeable financial effect on this property will not be material.

William W. Wynder
City of Carson
Dated: June 15, 2004
File Number A-04-116

Two city council members were advised they did not have a conflict of interest in voting on settlement of an election contest case in which the council members' election to their positions was challenged. The mayor pro tem was also advised regarding a potential conflict of interest where one of the contestants in the case is a business tenant and source of income of the mayor pro tem.

Stephen A. Kronick
Templeton Community Service District
Dated: June 24, 2004
File Number A-04-120

It is presumed that the financial effect of a groundwater decision relating to property located more than 500 feet from the properties of two officials is not material. The officials must evaluate whether the presumption is rebutted.

Thomas M. Hagler
U.S. Environmental Protection Agency
Dated: May 13, 2004
File Number A-04-020

As members of a state agency, the six federal members of the California Bay Delta Authority are required to comply with the Act's financial disclosure and conflict-of-interest provisions.

Gerald E. Raycraft
City of Suisun
Dated: May 19, 2004
File Number I-04-087

Since no facts were provided regarding specific governmental decisions, an individual who is considering a position as the city community development director was provided informal assistance with respect to the Act's conflict-of-interest provisions where he owns property potentially within 500 feet of the proposed redevelopment area and has certain other economic interests as well.

Michelle E. De Guzman
City of Emeryville
Dated: May 27, 2004
File Number A-04-100

It is presumed that an official's real property will experience a material financial effect as a result of decisions regarding the Emeryville Marketplace, located within 500 feet of the property. However, the official may participate because the "public generally" exception applies based on the facts provided by the official.

Stacey Simon
County of Mono
Dated: April 15, 2004
File Number I-04-013

Two members of a fishery commission are not subject to the Act's conflict-of-interest provisions because they are not "public officials" within the meaning of the Act as the newly created commission does not possess decision-making authority.

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Michael R.W. Houston
La Quinta Chamber of Commerce
Dated: April 26, 2004
File Number A-04-026

A city council member was advised that placing an advertisement, for which he would pay fair market value, for his private accountancy firm in a local chamber of commerce newsletter that was funded in part by city funds would violate the mass mailing provisions of the Act. The proposed advertisement included a photograph of the council member in a group photo of the firm and included the last name of the council member as part of the firm name.

George H. Eiser, III
City of National City
Dated: April 9, 2004
File Number A-04-033

A mayor is presumed to be prohibited from participating in decisions regarding property within 500 feet of his leased residence. However, this presumption may be rebutted pursuant to regulation 18705.2(a)(2), relating to leasehold interests. The "public generally" exception did not apply because there were insufficient facts regarding the "substantially the same manner" prong.

Dennis Beougher
City of Brentwood
Dated: April 9, 2004
File Number A-04-037

A city council member is advised that he does not have a conflict of interest and may participate in a governmental decision involving real property owned by the lessor of his business lease where the property is located more than 500 feet from the council member's leasehold property.

Elizabeth Wagner Hull
City of Chula Vista
Dated: April 15, 2004
File Number A-04-052

Council members may not participate in interrelated educational revenue augmentation funding decisions unless the "legally required participation" rule is followed.

Linda Balok
Marin Healthcare District
Dated: April 23, 2004
File Number I-04-065

Due to the lack of facts regarding specific governmental decisions, a director of a local healthcare district is provided informal assistance with respect to potential conflicts of interest involving her real property (apartment complex), business interests, and sources of income from property located more than 500 feet from the real property owned by the district, which is the subject of the governmental decisions.

John G. Barisone
City of Santa Cruz
Dated: April 15, 2004
File Number A-04-073

A city council member is advised on the application of the conflict-of-interest rules in the context of developmental decisions which may have an impact on a trust, which is a client of his architectural practice. The letter discusses the rules if the trust is a business trust, as opposed to a family trust.

Jim R. Karpiak
City of Fairfield
Dated: April 13, 2004
File Number A-04-077

A planning commissioner is prohibited from participating in consideration of a project because his home is 200 feet from the project site. Since the commissioner has a conflict of interest, any time that the decision will be considered at a noticed public meeting, the commissioner must: 1) immediately prior to the discussion of the item, publicly identify each type of economic interest involved in the decision as well as details of the economic interest as discussed in regulation 18702.5(b)(1)(B) on the record of the meeting; 2) recuse himself; and 3) leave the room for the duration of the discussion and/or vote on the item. However, the public official is not attempting to use his or her official position to make a governmental decision if the official appears in the same manner as any other member of the general public before an agency in the course of its prescribed governmental function, solely to rep-

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resent himself or herself on a matter which is related to his or her personal interests, including the official's real property.

Rachel H. Richman
Alhambra City Council
Dated: April 23, 2004
File Number I-04-078

If an applicant for an appointment to a vacant council seat is a source of income to a council member, the council member will have a disqualifying conflict of interest which will prevent him from participating in the decision to appoint an individual to the vacant city council position. Depending on the facts, the "legally required participation" exception may apply if a quorum cannot be achieved due to conflicts of interest among the council members. Under the "legally required participation" exception, if a quorum of the city council is not available due to conflicts of interest and there is no alternative source of decision-making authority, the "legally required participation" exception applies. However, the exception would allow only the participation by the smallest number of officials with a conflict of interest in order for the decision to be made.

Thomas R. Curry
Sonoma Community Center
Dated: April 23, 2004
File Number A-04-082

So long as the decision to approve a living wage ordinance will not materially affect the Sonoma Community Center, the council member's nonprofit employer, he may participate in that decision.

Jolie Houston
City of Gilroy
Dated: April 29, 2004
File Number A-04-083

A public official is advised that an unpaid position on the board of directors of a 501(c)(3) organization is not a financial interest in the 501(c)(3) under the Act, and will therefore not disqualify him from decisions regarding the 501(c)(3).

J. Dennis Crabb
County of Alpine
Dated: March 11, 2004
File Number A-03-241

A county supervisor does not have a conflict of interest in making a governmental decision regarding proposed changes to the county scenic highway zoning regulations, absent factors rebutting the presumption that the financial effect of the governmental decision is not material.

Karin D. Troedsson
City of St. Helena
Dated: March 5, 2004
File Number I-03-285

General advice is provided regarding the conflict-of-interest provisions as they pertain to a council member who, along with his spouse, is employed in the housing industry and will be considering decisions involving housing projects in the jurisdiction. The letter explains sources of income are disqualifying for 12 months following the last salary received by the public official.

Tei Yukimoto
City of Fresno
Dated: March 9, 2004
File Number I-03-300

General advice is provided regarding a potential conflict of interest in renegotiation of a city's cable franchise agreement, when the public official holds stock personally and through a family trust in the franchise. The letter discusses the differences between a "family trust" and a "business trust."

Celia Brewer
Solano Beach City Council
Dated: March 5, 2004
File Number I-03-303

A council member inquires as to whether the "public generally" exception applies to him regarding a sand replenishment decision which may affect the value of his home. The information provided reflects the evaluation made by an appraiser hired by the city that concluded that the exception did not apply since a significant segment was not affected in substantially the same manner. Although the significant segment included all residential units, only those who

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qualify as homeowners appeared to be affected in substantially the same manner as the public official, and that amount was insufficient to reach the 10% threshold necessary to meet the criteria of the exception. The other residential units could be used for rental income. Such financial impacts on the official's real property must also be considered when calculating the financial effect of the decision on the official.

D. R. Peck
San Diego Centre City Advisory Committee
Dated: March 5, 2004
File Number I-04-007

General advice is provided regarding the application of the 500-foot rule of regulation 18704.2. The rule should be applied by identifying the closest points on the boundary of the official's property and that of the subject property, and then measured by a straight line between those two points.

Teresa E. Ascarate
City of West Covina
Dated: March 1, 2004
File Number A-04-012

A city council member was disqualified from participating in two decisions to approve a new fee schedule and funding for new picnic tables and benches in a city park. A conflict of interest was found because the council member had an interest in real property, her residence, which was located adjacent to the park (within 500 feet). Both agenda items were directly involved with her economic interest in her real property, and it was reasonably foreseeable that a material financial effect would occur.

Tei Yukimoto
City of Fresno
Dated: March 16, 2004
File Number I-04-031

A council member who has been allowed to hunt doves for ten years on property which is subject to a governmental decision on ground-water contamination, is determined to have been conferred a personal benefit constituting a gift under the Act.

Marguerite Battersby
City of Highland
Dated: March 15, 2004
File Number A-04-036

A mayor requests advice as to whether he may renew insurance policies he sold to the city. The mayor may not influence city decisions to renew the two insurance policies.

Guy D. Petzold
City of Stockton
Dated: March 19, 2004
File Number A-04-050

A candidate for city council is advised that proceeds from the sale of a water use awareness program to one or more governmental entities will not meet the exception in Gov. Code section 82030(b)(2) for governmental salary because they are proceeds from the sale of a business.

Kathryn Doi
City of Benicia
Dated: March 25, 2004
File Number I-04-076

Informal assistance is provided regarding the meaning of "property owner" for purposes of the "public generally" exception where a potential conflict of interest arises from real property. Each person who owns property is counted as one "property owner." Two persons who jointly own one parcel of property count as two "property owners." A "property owner" is a person who owns real property regardless of the percentage of ownership in the property that the person possesses. Each person with an ownership interest in a trust which owns property can be counted as a "property owner." An official may not merely count parcels of property instead of "property owners" (i.e., persons) to determine if the "public generally" exception applies.

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Conflict of Interest Code

Craig A. Steele
Los Angeles County Children & Families First

Dated: April 1, 2004

File Number A-04-072

A corporation created by a public agency in order to implement a "Universal Pre-School Program" is a local government agency because: 1) its impetus for formation originated from a governmental agency, 2) its sole funding source is a governmental entity, and 3) it was created to perform functions the governmental agency was authorized to perform. Under the *Siegel* analysis, the corporation is considered a "local government agency."

Roman M. Plachy
Amador County Deputy Sheriffs' Association

Dated: March 24, 2004

File Number I-04-064

Under new regulation 18329.5, a challenge to inclusion in a conflict of interest code must first be submitted to the agency and then the code reviewing body. For a county, the code reviewing body is the county board of supervisors.

Gift Limits

Harold D. Ferber
Department of Health Services

Dated: April 9, 2004

File Number I-04-040

A chief deputy director of a state agency is provided informal assistance that a gift returned after thirty days is considered a gift received and, therefore he may have a conflict of interest in any governmental decision affecting his economic interest in the source of the gift. The gift limit does not apply since the gift was accepted prior to the time he became a public official.

Brad Castillo
City of Fresno

Dated: April 16, 2004

File Number A-04-069

A city council member who had been offered free laser eye surgery (LASIK) and related services, which the laser company would document on film, would be receiving a personal benefit not available to members of the public without regard to official status. Therefore, the surgery and related services would constitute a gift to the official, unless he could prove that he provided consideration of equal or greater value. If he made an oral presentation as part of the documentary, the free eye surgery would constitute a prohibited honorarium, unless it qualifies as earned income.

William D. McMinn
Port of San Diego

Dated: March 11, 2004

File Number I-04-042

A designated employee of a governmental agency has received a gift when the employee transfers a gift he or she received to a third party. San Diego Unified Port District employees were provided a flyer with a contract code from Holland America Line offering them, their families and their friends discounts on specific cruises. The employee has received a gift in the amount of the discount when he or she provides the flyer, or the information on the flyer, to someone else. This is true even if the third party does not utilize the discount.

Amy Bisson Holloway
Department of Education

Dated: March 8, 2004

File Number A-04-043

Payments for travel made by a nonprofit foundation to a designated employee may be reportable under the conflict of interest code of the employee's state department. However, even if reportable, these payments would not be subject to the gift limit under regulation 18950.1(b). Such payments can also trigger disqualification. Regulation 18944.2, relating to "gifts to an agency," did not apply.

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Honoraria

Susan McKenzie, M.D.
Department of Industrial Relations
Dated: March 5, 2004
File Number A-04-011

A state agency was advised that reasonable travel expenses for department employees serving as speakers at continuing educational seminars, paid by the course providers for these seminars, were not prohibited honoraria or subject to the gift reporting limits of the Political Reform Act. Additionally, since the travel expenses are not "payments" as defined in the Act, they do not meet the definition of "income" or "gift" and therefore, do not qualify as economic interests under a potential conflict-of-interest analysis for employees who serve as speakers and who are also responsible for approval of the course providers, authorized by the department to provide the necessary continuing educational classes as required under the department's program.

John R. Valencia
CA Dept of Health Services
Dated: March 29, 2004
File Number A-04-034

A corporation is prohibited from making an illegal honorarium. However, an honorarium is prohibited only to the extent that the recipient public official would have to report income from the same source on the official's statement of economic interests. In the case where the members of a board have no disclosure obligations, the corporation is not prohibited from paying a member an honorarium.

Delilah Adriatico
Department of Health & Human Services
Dated: March 26, 2004
File Number I-04-053

An employee of a state administrative agency received general, informal assistance on the post-employment provisions of the Act. In addition, the employee was given advice on how the prohibition on receiving honorarium (section 89502) would not apply to income she earned through the sale of a book she authored. How-

ever, the employee was advised that if the predominate activity of her business, once the book is published, is to make speeches at seminars and workshops to train others in the methodologies described in her book, any income earned from that activity would be prohibited honorarium, as long as she remained a state employee.

Lobbying

Jane Levikow
Tides Center
Dated: May 27, 2004
File Number A-04-086

Under the facts presented, the Tides Center, by simply providing administrative services to its clients, is not a lobbyist employer. Each client that engages in lobbying should be registered as a separate lobbyist employer.

Lindsay Crane
Lake County Sanitation District
Dated: April 20, 2004
File Number A-04-032a

A lobbying firm which receives payments for lobbying through a consulting firm hired by the client is advised to register the actual source of the payments as the lobbyist employer and disclose the consulting firm as an intermediary.

Lindsay Crane
Lake County Sanitation District
Dated: March 18, 2004
File Number A-04-032

A lobbying firm was advised that payments for lobbying services received through an intermediary should be reported as coming from the true source, the entity on whose behalf the firm will be lobbying.

Mass Mailing

Timothy W. Boyer
State Board of Equalization
Dated: April 20, 2004
File Number A-04-080

Items sent in the normal course of business from one governmental entity or officer to another governmental entity or officer are exempt from

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the restrictions of section 89001. It appears that the handbook "Prosecuting Tax Evasion" issued by the Board of Equalization, and distributed to other governmental agencies and officials (i.e., the Office of the Attorney General, district attorneys, city attorneys and superior courts) is exempt from the prohibition of sending of mass mailings at public expense because it is an item sent in the normal course of business from one governmental entity or officer to another governmental entity or officer.

Personal Use

Julia Miller

City of Sunnyvale

Dated: March 29, 2004

File Number I-04-035

A city council member wanted to use campaign funds to purchase lunch for other local officials from the city, and for a visiting delegation of officials from China. In order to use the funds, she must meet a higher standard by showing the meal is directly related to a political, legislative or governmental purpose because she receives a substantial personal benefit by attending. She should be able to meet this standard.

Stephen J. Kaufman

California Senate

Dated: March 8, 2004

File Number A-04-055

The use of campaign funds to cover a state senator and his spouse's travel, food and lodging when performing a marriage ceremony for a Senate staff member does not meet the standard of being directly related to a political, legislative or governmental purpose under section 89512 and 89513(a) of the Act, and therefore is not a permissible use of campaign funds.

Revolving Door

Richard A. Rogan

California Public Utilities Commission

Dated: June 17, 2004

File Number A-04-109

A court-appointed receiver, formerly employed by a state administrative agency was advised

that the one-year ban prohibited him from appearing before or communicating with that agency in connection with obtaining its approval to make a court-ordered sale of the assets of a regulated water utility which is in receivership. The courts are neither a state agency nor a local government agency, within the meaning of §§ 82049 or 82041 and thus the exceptions to the one-year ban applicable to employees of those agencies do not apply. However, the official was advised that under the state's Constitution, the courts fall within one of the three identified branches of state government. Thus, as an employee of the court, the official is representing the State of California and is not subject to the permanent ban.

Louis Blumberg

Department of Forestry & Fire Protection

Dated: May 4, 2004

File Number A-03-295

The Board of Forestry and Fire Protection is under the direction and control of the Department of Forestry and Fire Protection for purposes of the revolving door provisions of the Act. Therefore, a former deputy director for communications and legislation is precluded from appearing before the board for a period of one year after leaving state service.

Steven G. Churchwell

Kern County Water Agency

Dated: May 4, 2004

File Number A-04-063

A public official who left public service in 1989 and then returned to work for a state agency as a consultant in 2002 through the present and was a designated employee under its conflict of interest code had not "permanently left state service," as is required by regulation 18741.2 for application of sections 87401 and 87402. Therefore, the "revolving door" provisions of the Act were not applicable to the official when considering whether he could perform consulting services for another public entity. However, conflict-of-interest issues may exist, as well as issues outside of the Act, such as those arising from Government Code section 1090 or the doctrine of incompatible offices.

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Ben Davidian
Department of Insurance

Dated: April 13, 2004

File Number A-04-054

A former state employee who was a legislative analyst was advised that he was not subject to the "revolving door" provisions of the Act because his former position was not designated in the agency's conflict of interest code and he did not hold a position which entails the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest.

Mary Lou Gusman-Davis

Department of Finance

Dated: April 23, 2004

File Number I-04-066

The Act's post-employment restrictions do not prevent an official from accepting private employment while she is "running out" vacation time prior to retirement from state service. However, other bodies of law, such as Government Code §1090 and provisions relative to activities incompatible with her government employment, may limit her activities while she remains a state employee. The 12-month post-employment period during which she may not make appearances before her former agency employer does not begin to run until she has separated from state service, and this ban applies to any state agency for which she had worked over the prior twelve months, including any agency which employs her during the period immediately prior to her separation from state service. The permanent ban on "switching sides" may also limit her post-employment activities.

Jonna A. Ward

CA Health & Human Services Data Center

Dated: March 15, 2004

File Number A-04-016

A contractor with a state agency was advised regarding the applicability of the one-year "revolving door" ban. Specifically, advice was given on the expiration date for the one-year ban, applicable under her circumstances. In addition, the contractor was advised that the fact

she was not required to file a Form 700 with a state agency with whom she contracted does not, alone, determine whether the post-employment provisions of the Act apply to her. Even if a position is not designated in an agency's conflict of interest code, if an individual in that position makes or participates in making governmental decisions, the post-employment provisions apply.

George David Singleton
Department of Housing & Community Development

Dated: March 23, 2004

File Number A-04-021

A former state employee is advised on the applicability of Government Code sections 87401 and 87402 ("the permanent ban") on prospective employment with state contractors, local governments and tribal governments, and on testimony before the state Legislature.

Section 84308

Clark H. Alsop
San Bernardino County Local Agency Formation Committee

Dated: June 21, 2004

File Number A-04-079

While "entitlement for use" does not have a set legal meaning, the term generally does not cover proceedings where general policy decisions or rules are made or where the interests affected are many and diverse. Consistent with this conclusion, a proceeding involving the dissolution of a community services district (which encompasses approximately 1,730 square miles of territory, including all of the territory within three cities and the unincorporated area of the county) is not a proceeding involving an entitlement for use. Thus, section 84308 does not apply.

W. Andrew Hartzell
County of San Bernardino
Dated: March 2, 2004
File Number I-03-273

A county board of supervisors was advised regarding the application of Government Code section 84308, specifically the time periods con-

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tained in that section. Government Code section 84308 disqualifies any “officer” of a public agency from participating in certain proceedings if the official has received campaign contributions of more than \$250 from a party, participant or their agents within the 12 months preceding the decision. It also requires disclosure on the record of the proceeding of all campaign contributions received from these persons during that period. In addition, section 84308 prohibits solicitation or receipt of campaign contributions in excess of \$250 during such proceedings, or for 3 months after the decision, from parties, participants or their agents. The advice explains that the statutory rule of 3 months should be applied by counting 3 months from the day after the proceeding.

Statement of Economic Interests

Diane Eidam
California Transportation Commission
Dated: May 20, 2004
File Number A-04-028

Members of a state advisory panel are not required to file SEIs because they are not members of a board or commission with decision-making authority. The panel makes no final decisions and has no authority to compel decisions. Over time, it may establish a history of decision making, but no such history presently exists.

